SUPREME COURT

THE ANGLO-AMERICAN PROVISION COMPANY,
PLAINTIFF IN ERROR,

vs.

DAVIS PROVISION COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF [illegible]

FILED JUNE 6, 1892.

(15,876.)

(18,575.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 64.

THE ANGLO-AMERICAN PROVISION COMPANY, PLAINTIFF IN ERROR,

vs.

DAVIS PROVISION COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 18, 1903.

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a In the Court of Appeals.

On Appeal from the Appellate Division of the Supreme Court for the First Judicial Department.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

Appeal Book.

Weiser & Bridges, attorneys for plaintiff-appellant, 35 William street, New York city.

Smith, Conway & Weed, attorneys for defendant-respondent, 21 Cortlandt street, New York city.

1 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

Statement under Rule 41.

This action was commenced on November 21st, 1899, by service of the summons and complaint on that day.

Issue was finally joined by service of a demurrer to the complaint on December 20th, 1899.

The names of the parties in full are as stated above.

There has been no change in the parties or their attorneys since the commencement of the action.

The trial judge delivered no other opinion other than as heretofore set forth.

2 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

SIRS: Please take notice that the plaintiff above-named hereby appeals to the appellate division of this court for the first department from the decision and judgment heretofore, and on the 21st day of February, 1900, entered in the office of the clerk of the county of New York, dismissing the complaint of the plaintiff, with costs, and from each and every part of said decision and judgment.

Dated New York, February 23d, 1900.

WEISER & BRIDGES,
Attorneys for Plaintiff-Appellant, 35 William Street, New York City, Borough of Manhattan.

To Smith, Conway & Weed, Esqrs., attorneys for defendant-respondent; William Sohmer, Esq., clerk of the county of New York.

3 Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant. } Summons.

New York is the county in which the plaintiff desires the trial of this action.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, November 20, 1899.

WEISER & BRIDGES,
Plaintiff's Attorneys.

Office and post-office address, No. 35 William St., New York city, borough of Manhattan.

4 New York Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

The plaintiff above named, by Weiser & Bridges, its attorneys, complains of the above-named defendants, and alleges as follows:

First. That both plaintiff and defendant are foreign corporations, organized and existing under the laws of the State of Illinois.

Second. That on or about the fourth day of November, 1893, plaintiff duly commenced an action in the circuit court of Cook county, in the State of Illinois, which said court is a court of general jurisdiction duly created by the laws of said State, against the defendant, by process of summons duly issued in said action; that defendant duly appeared in said action by its attorneys, and that such proceedings were thereupon duly had in said action; that on or about the sixth day of January, 1899, the plaintiff recovered a judgment, which was duly given by said court, against the defendant for the sum of $5,049.98, no part of which has been paid.

Third. That by the laws of said State the interest upon a judgment runs at the rate of five per centum per annum.

5 Wherefore, plaintiff demands judgment against the defendant for the sum of $5,049.98, with interest thereon from the sixth day of January, 1899, together with the costs of this action.

WEISER & BRIDGES,
Attorneys for Plaintiff.

CITY AND COUNTY OF NEW YORK, ss:

Henry Wilson Bridges, being duly sworn, deposes and says: I am a member of the firm of Weiser & Bridges, attorneys for The Anglo-American Provision Company, plaintiff in this action. I have read the foregoing complaint and know its contents. The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The sources of my knowledge, and the grounds for my belief are a certified copy of the record of proceedings had in the circuit court of Cook county, State of Illinois, in the action entitled "Anglo-American Provision Company *v.* Davis Provision Company," and correspondence and interviews had with the agent of said Anglo-American Provision Company. The reason why the complaint is not verified by the plaintiff, is that the said plaintiff is a foreign corporation of which no officer is at present in the city or State of New York, in which city and State I reside and have my office.

HENRY WILSON BRIDGES.

Sworn to before me this 20th day of November, 1999.

K. BERRALL,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

6 Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

The defendant demurs to the complaint herein and for the grounds of its demurrer states that it appears upon the face of the complaint,

First. That the court has not jurisdiction of the person of defendant.

Second. That the court has not jurisdiction of the subject of the action.

Third. That the complaint does not state facts sufficient to constitute a cause of action.

Fourth. That the plaintiff and defendant are both foreign corporations and the action is not brought to recover damages for a cause of action for the breach of a contract made within the State or relating to property situated within the State at the time of the making thereof; that it is not brought to recover real property situated within the State, or a chattel which is replevied within the State; that the cause of action did not arise within the State.

Fifth. That the action is not brought for any of the causes
7 of action specified in section 1780 of the Code of Civil Procedure, upon which one foreign corporation is authorized to maintain an action against another foreign corporation within the

State, and plaintiff has not authority to maintain the action and the court has not jurisdiction thereof.

Wherefore, defendant asks that the complaint be dismissed, with costs.

SMITH, CONWAY & WEED,
Attorneys for Defendant, 21 *Courtlandt Street*,
New York City, N. Y.

8 At a special term of the supreme court of the State of New York, in and for the county of New York (part III), held at the county court house, in the borough of Manhattan, State of New York, on the — day of February, 1900.

Present: Hon. John J. Freedman, justice.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

The issues at law in this action, arising upon the demurrer to the complaint, coming on to be tried before me, at a special term of this court, held at the court house, in the borough of Manhattan, State of New York, on the 5th day of February, 1900, and after hearing Thomas F. Conway, Esq., of counsel for the said defendant, in support of the said demurrer, and Henry Wilson Bridges, Esq., counsel for the plaintiff in opposition; and due deliberation had thereon, I do make the following decision and find the following conclusions of law:

First. That the court has not jurisdiction of the person of defendant.

Second. That the court has not jurisdiction of the subject of the action.

9 *Third.* That the complaint does not state facts sufficient to constitute a cause of action.

Fourth. That the plaintiff and defendant are both foreign corporations, and the action is not brought to recover damages for a cause of action for a breach of a contract made within the State, or relating to property situated within the State at the time of the making thereof; that it is not brought to recover real property situated within the State, or a chattel which is replevied within the State; that the cause of action did not arise within the State.

Fifth. That the action is not brought for any of the causes of action specified in section 1780 of the Code of Civil Procedure, upon which one foreign corporation is authorized to maintain an action against another foreign corporation within this State, and plaintiff has not authority to maintain the action and this court has not jurisdiction thereof.

And I accordingly decide that the said demurrer of said defendant to the complaint of the plaintiff be sustained, and I direct that final judgment be entered in the above-entitled action, dismissing the

complaint of the plaintiff, with costs in favor of defendant and against plaintiff, to be taxed by the clerk of this court.

Ent.

JNO. J. FREEDMAN, *J.*

10 Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff, *against* DAVIS PROVISION COMPANY, Defendant. } Judgment February 21st, 1900.

The above defendant having demurred to the complaint of the plaintiff, and the issues raised by said demurrer having been tried at a special term of this court, part III, held by Mr. Justice Freedman, and a decision having been rendered by said justice sustaining said demurrer and dismissing the complaint with — dollars, extra allowance and taxable costs, and said decision having directed final judgment accordingly;

Now, upon reading and filing the summons, complaint and demurrer herein, and said decision; and upon motion of Smith, Conway & Weed, attorneys for defendant,

It is adjudged, that the demurrer of the defendant to said complaint be, and it hereby is sustained, and the complaint of plaintiff be, and it hereby is, dismissed, with forty-five and 50/100 dollars costs to said defendant against said plaintiff, and that defendant have execution therefor.

Enter.

J. J. F.

11 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff, *against* DAVIS PROVISION COMPANY, Defendant. }

Memorandum of Mr. Justice Freedman.

The defendant is entitled to judgment upon the demurrer to the complaint, with costs.

COUNTY OF NEW YORK, *ss:*

Charles Weiser, being duly sworn, deposes and says: I am one of the attorneys for the plaintiff in this action. No opinion in writing other than the above memorandum has been made in this action by the justice, before whom the issue of law herein was tried.

CHARLES WEISER.

Sworn to before me this 23d day of February, 1900.

EDWIN B. WOODS,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

12 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-, Appellant,
against
DAVIS PROVISION COMPANY, Defendant-, Respondent.

It is hereby stipulated that the foregoing are true copies of the judgment roll and notice of appeal, which are all the papers upon which this case is to be heard, and certification thereof by the clerk is hereby waived.

Dated New York, February —, 1900.

WEISER & BRIDGES,
Plaintiff's Attorneys.
SMITH, CONWAY & WEED,
Defendant's Attorneys.

13 Supreme Court, Appellate Division, First Department.

MARCH, 1900.

Chas. H. Van Brunt, P. J.; Edward Patterson, Morgan J. O'Brien, George L. Ingraham, Chester B. McLaughlin, JJ.

ANGLO-AMERICAN PROVISION COMPANY, Appellant,
against
DAVIS PROVISION COMPANY, Respondent. } No. 2047.

Appeal from interlocutory judgment sustaining demurrer to complaint.

Henry Wilson Bridges, for appellant.
Thomas F. Conway, for respondent.

O'BRIEN, *J.*:

The complaint seeks to establish a judgment obtained in the circuit court of Cook county, State of Illinois, under the laws of which State both corporations, plaintiff and defendant, were organized and now exist. The demurrer thereto was sustained on the ground that the court had no jurisdiction, both parties being foreign corporations.

We do not regard the question of whether one foreign corporation can sue another corporation in our courts as any longer open to discussion. As stated in the concurring opinion of Judge Van Brunt in Barker *v.* Cunard Steamship Co. (91 Hun., 500):

14 "In respect to foreign corporations the supreme court has never been a court of general jurisdiction. It has no jurisdiction of actions against foreign corporations, except such as is conferred by statute. Hence, the rule which ordinarily applies to this court as a court of general jurisdiction cannot obtain in actions against foreign corporations. It must appear somewhere in the record that jurisdiction exists." See also Ladenburg *v.* Commercial Bank of Newfoundland (87 Hun., 269).

By section 1780 of the Code of Civil Procedure, it is provided: "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only. * * * 3d. Where the cause of action arose within the State." Though it be conceded that an action on a foreign judgment is an action on contract, and though a foreign judgment may be enforced in this State, it does not follow that a suit brought by a foreign corporation on a foreign judgment is an action which arises in this State.

Nor do we think that there is force in the further contention that section 1780 of the code is unconstitutional as violative of the provision of the United States Constitution, that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." The present case is analogous to that of Chemung Canal Bank *v.* Lowery (93 U. S., 72), where a State statute of limitations was attacked as repugnant to the same clause of the Constitution of the United States as is here brought before us, and it was held that the law in question did not produce any unconstitutional discrimination. Furthermore, it may be said that, in the case of a foreign corporation presenting such a question as this, this State has expressly held that, as such a corporation comes within our jurisdiction only by permission, express or implied, it assents to certain conditions, and, even if those conditions were unconstitutional, it would be estopped from attacking them (People *v.* Fire Ass'n, 92 N. Y., 326).

The other constitutional question raised is disposed of by the case of Robinson *v.* Oceanic Steam Nav. Co. (112 N. Y., 315, at page 324), as follows: "It is claimed, however, that section 1780 of the code, so far as it discriminates between resident and non-resident plaintiffs, is repugnant to section 2 of article 4 of the Federal Constitution, wherein it is provided that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. This section makes no discrimination between citizens, but between residents and non-residents. Without attempting to define the full scope of the constitutional provision, it is sufficient to say that it has no application to a case like this, and there are numerous decisions to that effect." In the same opinion the learned judge quotes with approval what was said in Davidsburgh *v.* Knickerbocker Life Ins. Co. (90 N. Y., 526): "There are, no doubt, many cases where the court, having jurisdiction over the subject-matter, may proceed against a defendant who voluntarily submits to its decision; but where the State prescribes conditions under which a court may act, those conditions cannot be dispensed with by litigants, for in such a case the particular condition or status of the defendant is made a jusisdictional fact."

Judgment affirmed with costs.

All concur.

16 At a term of the appellate division of the supreme court, first department, held at the court house of said appellate division in the county of New York, on the 12th day of April, 1900.

Present: Hon. Charles H. Van Brunt, presiding justice; Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. George L. Ingraham, Hon. Chester B. McLaughlin, associate justices.

ANGLO-AMERICAN PROVISION COMPANY, Appellant,
against
THE DAVIS PROVISION COMPANY, Respondent.

A judgment having been entered in the above-entitled action in the office of the clerk of the county of New York on February 21st, 1900, sustaining defendant's demurrer to plaintiff's complaint, and dismissing said complaint, with forty-five and 50/100 dollars costs; and plaintiff having appealed from said judgment to the appellate division of the supreme court, first department, and the appeal coming on to be heard; and after hearing Henry Wilson Bridges, of counsel for appellant, in support of the appeal, and Thomas F. Conway, of counsel for respondent, in opposition thereto, and due deliberation having been had;

17 Now, upon motion of Smith, Conway & Weed, attorneys for respondent-defendant,

It is ordered, that said judgment so appealed from be, and the same hereby is, affirmed, with costs to respondent.

N. Y. Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
THE DAVIS PROVISION COMPANY, Defendant-Respondent.
} Judgment.

The plaintiff having appealed to the appellate division of the New York supreme court, first department, from a judgment entered in the above-entitled action in the office of the clerk of the county of New York February 21st, 1900, sustaining defendant's demurrer to plaintiff's complaint, and dismissing the complaint with forty-five and 51/100 ($45.51) dollars costs; and an order having been made by said appellate division affirming with costs the said judgment so appealed from, and the costs having been taxed by the clerk of the county of New York, by consent, at sixty-seven and 55/100 dollars ($67.55);

Now, upon motion of Smith, Conway & Weed, attorneys for defendant-respondent, it is

Adjudged, that the judgment entered in the office of the
18 clerk of the county of New York herein, on February 21st, 1900, sustaining defendant's demurrer to plaintiff's complaint be, and the same hereby is, affirmed;

And it is further adjudged, that defendant recover of plaintiff, as and for the costs of said appeal, the sum of $67.55, and that defendant have execution therefor.

May 4th, 1900.

WM. SOHMER, *Clerk.*

Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
THE DAVIS PROVISION COMPANY, Defendants.

SIRS: Please take notice that the above-named plaintiff hereby appeals to the court of appeals from the order of the appellate division of the supreme court for the first department, dated the 24th day of April, 1900, and the judgment entered thereon in the office of the clerk of the county of New York on the fourth day of May, 1900, affirming the judgment entered heretofore and on the 21st day of February, 1900, in the office of the clerk of the county of New York, sustaining the demurrer of the defendant to plain-
19 tiff's complaint herein, and from each and every part of the said order and judgment.

Dated New York, October 6th, 1900.

WEISER & BRIDGES,
Plaintiff's Attorneys, 35 *William Street, New York City, (Borough of Manhattan).*

To William Sohmer, Esq., clerk of the county of New York; Messrs. Smith, Conway & Weed, attorneys for defendant.

STATE OF NEW YORK, *County of New York*, } *ss.:*

I, William Sohmer, clerk of the said county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original copy, appellate division, order, judgment and notice of appeal, Anglo American Provision Company, — The Davis Provision Company, on file in my office, and that the same are correct transcripts therefrom, and the whole of such originals.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 12th day of October, 1900.

WILLIAM SOHMER, *Clerk.*

20 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

It is hereby stipulated that the foregoing are true copies of the notice of appeal to the court of appeals, the order of the appellate

division of the supreme court, and the judgment entered thereon and all the papers on which the court below acted in making such order and determination, and certification thereof by the clerk of New York county is hereby waived pursuant to the provisions of section 3301 of the Code of Civil Procedure.

Dated New York, October 24th, 1900.

WEISER & BRIDGES,
Attorneys for Plaintiff.
SMITH, CONWAY & WEED,
Attorneys for Defendant.

21 Form 5.

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 28th day of January, in the year of our Lord one thousand nine hundred and two, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur January 29th, 1902.

22 ANGLO AMERICAN PROVISION COMPANY, Appellant,
ag'st
DAVIS PROVISION COMPANY, Respondent.

Be it remembered, that on the 25th day of October, in the year of our Lord one thousand nine hundred Anglo American Provision Company, the appellant in this action, came here into the court of appeals, by Weiser and Bridges, its attorneys, and filed in the said court a notice of appeal and return thereto from the order & judgment of the appellate division of the supreme court in and for the first judicial department. And Davis Provision Company, the respondent in said action, afterwards appeared in said court of appeals by Smith, Conway and Weed, its attorneys.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

23 Whereupon the said court of appeals having heard this cause argued by Mr. Henry Wilson Bridges, of counsel for the appellant, and by Mr. Frank Smith, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the appellate division of the supreme court appealed from herein be, and the same hereby is affirmed, with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

24 Therefore, it is considered that the said judgment be affirmed, with costs, as aforesaid.

And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgement of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *January 29th*, 1902.

Seal State of New York Court of Appeals.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein, attached thereto.

W. H. SHANKLAND, *Clerk.*

25 ANGLO-AMERICAN PROVISION COMPANY, Appellant,
v.
DAVIS PROVISION COMPANY, Respondent.

(Decided January 28th, 1902.)

Henry Wilson Bridges for appellant.
Frank E. Smith for respondent.

GRAY, *J.:*

The plaintiff and the defendant are foreign corporations, organized under the laws of the State of Illinois, and the action is brought upon a judgment; which is alleged in the complaint to have been recovered against the defendant in a court of general jurisdiction, within that State. The cause of action, however, upon which the judgment was rendered, is not set forth. The defendant demurred to the complaint; specifying, as grounds, a want of jurisdiction in the court, as to the person of the defendant and as to the subject-matter, and that the complaint did not state facts sufficient to constitute a cause of action. The demurrer has been sustained below and the complaint was dismissed.

Upon the appeal, which the plaintiff now takes to this court from the judgment of dismissal, we have presented questions of the construction which is to be given to the provisions of section 1780 of our Code of Civil Procedure and of how far its provisions are affected, or controlled, by section I of article IV of the Constitution of the United States.

Section 1870 provides that, "an action against a foreign corporation may be maintained by another foreign corporation, * * * in one of the following cases only: * * * 3. Where the cause of action arose within the State."

26 The demurrer admits the recovery of a valid judgment and I shall assume that it was upon a cause of action generally valid. The questions are both interesting and important; but I think that the legal principles, which should guide the decision, are well settled.

The appellant's contention, in effect, is that the cause of action set forth in the complaint arose within this State; because an action on a foreign judgment is an action on a contract, which is to be performed in this State, as everywhere within the United States, where the judgment debtor is called upon to pay it. It is somewhat difficult to appreciate the force of the reasoning, which resolves a judgment, that has been rendered between the parties within a foreign jurisdiction, into a cause of action that "arose within the State." Doubtless, a judgment, as debt of record, is a contract obligation of the highest nature. The cause of action has become merged and the law implies the obligation and the promise of the defendant to pay; but it is not a contract in the sense of any engagement of the parties with each other. The element of mutuality is wanting; for *judicium redditur in invitum.* (Bidleson *v.* Whytle, 3 Burrows, 1545; McCoun *v.* N. Y. C. & H. R. R. R. Co., 50 N. Y. 176; Gutta Percha & R. Mfg. Co. *v.* Mayor, etc., of Houston, 108 *ib.* 276.) We may concede that an action on a foreign judgment is an action *ex contractu;* but that there is, within the meaning of the statute, a cause of action which arose within the State, permits of grave doubt and puts a severe strain upon what seems to be plain language. If a judgment is a new debt, (Freeman on Judgments, sec. 217), it was created and, therefore, as it seems to me, arose where
27 the judgment was had. But, if we admit that the failure to pay a judgment is a breach of the defendant's obligation, which warrants the plaintiff in enforcing it by an action wherever the defendant may be reached by process, that general right may, nevertheless, be subjected to limitations, when sought to be exercised in other jurisdictions than that in which the plaintiff is domiciled; such as appear to have been imposed by our statute. The code prescribes that, when an action is between two foreign corporations, the cause of action must be one which arose within the State and a judgment recovered in the foreign jurisdiction is not such by any necessary implication. A statute is to be given that meaning which the ordinary reading of its language warrants and, thus read, the cause of action mentioned in section 1780 must be one local in its nature, with reference to the State. The code is not dealing with legal fictions. (McCoun *v.* N. Y. C. & H. R. R. R. Co. *supra.*) I am of the opinion that a foreign judgment, which has failed of enforcement in the jurisdiction where rendered, cannot be regarded, when sued upon within the State, as included within the class described by this section; however, in legal contemplation, it may be regarded as an unperformed obligation of the judgment debtor. Authorities seem hardly necessary, in support of the proposition: but the principle appears in the cases, to which we have been referred. (Barnes

v. Kenyon 2 Johns. Ca. 381; Thelwall *v.* Yelverton, 16 C. B. (N. S.) 813, and see Pigott on Foreign Judgments, (ed. 1884), p. 233.)

As to the power of the State to prescribe, arbitrarily, or
28 from policy, limitations and conditions upon the exercise by foreign corporations of corporate rights, I suppose there to be no doubt; whether they be upon the right to do business here, or upon the right to sue in our courts. (People *v.* Fire Association of Phila., 92 N. Y. 311, 324; Bank of Augusta *v.* Earle, 13 Peters, 517, 590; Paul *v.* Virginia, 8 Wall. 168, 181; Pembina Mining Co. *v.* Pennsylvania, 125 U. S. 181, 187; Waters, etc., Oil Co. *v.* Texas 177 *ib.* 28, 45.) Within each State, the people exercise all the powers of government not granted to the General Government, nor prohibited by the Federal Constitution. (10th art. of amendments.) They are prescribed in the constitution of the State, the instrument which furnishes the rules of action and measures the powers of the agents of government designated therein, and they are exercised in the laws, which are promulgated by the law-making body. A corporation could not claim the benefit of those provisions of the Federal Constitution, which confer upon the citizens of each State a general citizenship and secure to them in other States all the privileges and immunities to which the citizens would there be entitled, under the constitution and laws of the State under like circumstances. (U. S. Constitution, sec. 2 art. IV. and amendment XIV.) A corporation, as an artifical person, exists only by force of the law which created it. It has no extraterritorial existence and what rights it may exercise in other jurisdictions are permitted upon the principle of comity. It is not a citizen of the State in the constitutional sense. (Story on the Constitution, sec. 1695; Pembina Mining Co. *v.* Pennsylvania, *supra.*) In Paul *v.* Virginia (*supra*), this question was very fully discussed and it was said that "the corporation being the mere
29 creation of local law can have no legal existence beyond the limits of the sovereignty w-ere created. As said by this court in Bank of Augusta *v.* Earle, 'It must dwell in the place of its creation, and cannot migrate to another sovereignty.' The recognition of its existence, even by other States and the enforcement of its contracts made therein, depend purely upon the comity of those States. * * * Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business in particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

It is strenuously insisted, however, that the action is maintainable, within the meaning and operation of section 1 of article IV of the Constitution of the United States; which reads that "full faith and credit shall be given in each State to the public acts, records and

judicial proceedings of every other State; and the Congress may, by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." A general view of the constitutional provision would make its purpose appear to be to introduce uniformity in the rules of proof; to prescribe the effect of such proof or authentication, and to attribute to foreign judgments "positive and absolute verity, so that they
30 cannot be contradicted or the truth of them denied, any more than in the State where they originated." (Story on the Constitution, secs. 1310, 1312.) The effect, which the appellant would have the court give to these provisions, is to invest the foreign judgment with such ubiquitous character and force, as, upon its being brought within the State, to make it mandatory upon its courts to entertain an action for its enforcement. That this is the true construction of the clause I doubt and my doubt appears to be supported by authority. I refer to what was said about the "full faith and credit" clause of the Federal Constitution in Wisconsin *v.* Pelican Ins. Co. (127 U. S. 265). "Those provisions," it was said, "establish a rule of evidence, rather than of jurisdiction. While they make the record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one State in the Union, when proved in the courts of another government, whether State or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the case and of the parties. (Hanley *v.* Donoghue 116 U. S. 1, 4.) In the words of Mr. Justice Story, cited and approved by Mr. Justice Bradley, speaking for this court, "The Constitution did not mean to confer any new power upon
31 the States, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of other States domestic judgments to all intents and purposes, but only gave a general validity, faith and credit to them as evidence.' * * * A judgment recovered in one State, as was said by Mr. Justice Wayne, delivering an earlier judgment of this court, 'does not carry with it, into another State the efficiency of a judgment upon property of persons, to be enforced by execution. To give it the force of a judgment in another State, it must be made a judgment there; and can only be executed in the latter as its laws may permit.' (McElmoyle *v.* Cohen, 13 Pet. 312, 325.)" (See also, Huntington *v.* Attrill, 146 U. S. 657, 684; Lynde *v.* Lynde, 181 U. S. 183.) I do not think that this clause of the Federal Constitution has the virtue attributed to it by the appellant; or that the Code provision in question is in conflict with it.

From a consideration of the authorities, the conclusion must re-

sult that the limitation imposed by section 1780 of the Code, upon the jurisdiction of the courts, in the respect discussed, was valid exercise of the power of the State and that, when the cause of action is the enforcement of a judgment rendered in a foreign jurisdiction it is not one which, in the contemplation of the statute, arose within the State. Nor can it be said to be an unreasonable exercise of power, for the State to restrict litigation in its courts to causes of local origin, where a foreign corporation is sued by a foreign corporation. (Robinson *v.* Oceanic Steam Nav. Co., 112 N. Y. 315, 323.)

32 The conclusion is reached without considering an aspect of the question, which is not, possibly, without importance and that is that it does not appear from the complaint that the cause of action, upon which the plaintiff recovered its judgment was one which it might constitutionally sue upon here. (Huntington *v.* Attrill 146 U. S. 657, 685.)

The judgment should be affirmed with costs.

Parker, Ch. J., O'Brien, Bartlett, Haight, Cullen and Werner, JJ. concur.

Judgment affirmed.

33 [Endorsed:] In the court of appeals. Anglo American Provision Co., appellant, against Davis Provision Company, respondent. (Copy.) Opinion.

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of New York, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The Anglo American Provision Company, the plaintiff, and The Davis Provision Company, the defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege, or exemption especially set up or claimed under said clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of said Anglo American Provision Company as by its complaint appears, we being

willing that error, if any hath been, should be duly corrected
35 and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 13th day of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the 7th day of April, in the year of our Lord, one thousand nine hundred and two.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk Circuit Court of the United States,
South. Dist. of New York.

Allowed by—
ALTON B. PARKER,
Chief Judge Court of Appeals, State of New York.

36 [Endorsed:] U. S. Supreme Court. Anglo America Provision Company, plaintiff, appellant, against Davis Provision Company, defendant, respondent. (Original). Writ of error. Weiser & Bridges, att'ys for plaintiff-appellant, 35 William street, New York city, (borough of Manhattan) Copy rec'd this 19th day of March, 1902. Smith Conway & Weed att'ys for respondent.

37 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

To the justices of the Supreme Court of the United States, Greeting:

The return of the judges of the court of appeals of the State of New York in pursuance to the writ of error granted in the action entitled "Anglo-American Provision Company, appellant against Davis Provision Company, respondent, is contained in the papers and proceedings hereto attached.

Seal State of New York Court of Appeals.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this 8th day of April A. D. 1902.

W. H. SHANKLAND,
Clerk of the Court of Appeals.

38 By the Honorable Alton B. Parker, chief judge of the court of appeals, in the State of New York.

To Davis Provision Company, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at the city of Washington, in the District of Columbia on the 13th day of October 1902, pursuant to a writ of error filed in the clerk's office of the court of appeals in New York wherein The Anglo American Provision Company is appellant and you are respondent to show cause if any there be why the decree in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the city of Albany, State of New York this 14th day of March, in the year of our Lord, one thousand nine hundred and two, and of the Independence of these United States the one hundred and twenty-sixth.

[Seal State of New York Court of Appeals.]

ALTON B. PARKER,
Chief Judge of the Court of Appeals, New York State.

39 [Endorsed:] Court of appeals, New York State. Anglo American Provision Co., appellant against Davis Provision Company, respondent. (Original) Citation. Copy received this 19th day of March, 1902. Smith, Conway & Weed, attorneys for respondent.

40 In the Court of Appeals, State of New York.

ANGLO AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

Now comes the plaintiff-appellant, Anglo American Provision Company, into court by its attorneys, Weiser & Bridges, and says that in the record and proceedings herein there is manifest error in this to wit:

First. The court below erred in finding that the State has power arbitrarily to prescribe limitations and conditions upon the exercise by foreign corporations of corporate rights in so far as it effects the right of a foreign corporation to sue in the State courts upon a judgment lawfully obtained in a foreign State on a personal appearance on behalf of the defendant.

Second. The court below erred in not finding that under article 4 section I. of the Constitution of the United States, a foreign corporation must be protected in its right to sue on a foreign judgment obtained on defendant's appearance, where such judgment was not recovered for penalty, and that in case such judgment was recovered as a penalty that this must be pleaded by way of defense.

Third. The court below erred in not holding that section 1780 of the New York Code of Civil Procedure was unconstitutional and void in that it violated the provisions of article 4, section I of
41 the United States Constitution in not allowing a foreign corporation to bring an action in the State of New York on a foreign judgment obtained on voluntary appearance of defendant where the subject matter of such judgment did not arise in penalty.

Fourth. The court below erred in not finding that the plaintiff was entitled to judgment in the State of New York against the defendant for the sum of five thousand forty-nine and 98/100 dollars with interest thereon from the 6th day of January 1899, together with costs of the action.

Wherefore: for diverse other errors in said record appearing the plaintiff-appellant prays that the final decree appealed from be reversed and annulled and that a decree be entered in favor of plaintiff-appellant and against defendant-respondent as prayed for by the bill of complaint herein with costs.

WEISER & BRIDGES,
Att'ys for Plaintiff-Appellant.

42 [Endorsed:] In the court of appeals, State of New York. Anglo American Provision Company, plaintiff-appellant, against Davis Provision Company, defendant-respondent. (Original) Assignment of error. Weiser & Bridges, att'ys for plaintiff-appellant, 35 William street, New York city. (Borough of Manhattan)

43 Court of Appeals, State of New York.

ANGLO AMERICAN PROVISION COMPANY, Plaintiff-Appellant, *against* DAVIS PROVISION COMPANY, Defendant-Respondent. } Bond for Damages and Costs.

Know all men by these presents, that The City Trust, Safe Deposit & Surety Company of Philadelphia, a corporation duly organized under the laws of the State of Pennsylvania, and having its principal office in the city of Philadelphia, but lawfully transacting business in the State of New York, and having an office at No. 160 Broadway, New York city, State of New York, is held and firmly bound unto the above-named Davis Provision Company, in the sum of two hundred and fifty ($250.00) dollars, to be paid to the said defendant-respondent, Davis Provision Company, for the payment of which well and truly to be made, it binds itself, its successors and assigns, firmly by these presents.

Sealed with our seals, and dated the 24th day of February, 1902.

Whereas, the above-named plaintiff-appellant has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judges of the court of appeals of the State of New York;

Now therefore, the condition of this obligation is such, that if the above-named Anglo American Provision Company, plaintiff-appellant, shall prosecute its said appeal to effect and answer all damages and costs, if it fail to make its said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE CITY TRUST, SAFE DEPOSIT AND SURETY COMPANY OF PHILADELPHIA,
160 *Broadway, N. Y.*

JNO. A. SULLIVAN, *Vice-President.*
P. H. MOONEY, *Ass't Secretary.* [L. S.]

Sealed and delivered in the presence of—
—— ——.

44 S. D. 59.—1902. New York.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 24 day of February A. D., 1902, before me personally appeared John A. Sullivan, to me known, who being by me duly sworn, did depose and say: That he resided in the city of New York; that he is the vice-president of the City Trust, Safe Deposit and Surety Company of Philadelphia, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided by section 3, chapter 720, of the New York Session Laws of 1893.

And the said John A. Sullivan further said, that he was acquainted with Patrick H. Mooney and knew him to be the assistant secretary of said corporation; that the signature of said Patrick H. Mooney subscribed to said instrument is in the genuine handwriting of said Patrick H. Mooney, and was thereto subscribed by like order of said board of directors and in the presence of him, the said John A. Sullivan, vice-president.

[L. S.]

WM. K. JARDINE,
Notary Public, Kings County, # 58.

Certificate filed in New York county.

At a regular meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, for the purposes of organization, on the eleventh day of May, A. D. 1897, the following resolutions were adopted:

On motion of Dr. Baker, duly seconded, Mr. Stephen Farrelly, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power to execute in the name of the company, and to affix

the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John A. Sullivan, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power in the absence of Mr. Stephen Farrelly, resident vice-president, to execute in the name of the company, and to affix the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company, in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John A. Sullivan was elected as assistant secretary of the company, in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds or contracts of suretyship which have been signed by Mr. Stephen Farrelly, or Mr. John McAnerney, its resident vice-presidents, in the conduct of the business of the company in the State of New York.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, on the ninth day of January, 1899, the following resolution was adopted:

On motion of Mr. Potts, duly seconded by Dr. Baker, Mr. Patrick H. Mooney was elected as assistant secretary of the company, in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds or contracts of suretyship which have been signed by Mr. Stephen Farrelly, or Mr. John McAnerney, or Mr. John A. Sullivan, its resident vice-presidents, in the conduct of the business of the company in the State of New York.

At a regular meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, for the purposes of organization, on the fifteenth day of May, A. D., 1901, the following resolution was adopted:

On motion of General Wagner, duly seconded, the following gentlemen were unanimously re-elected as vice-presidents and assistant secretaries in the various places named: Resident vice-presidents at New York, Stephen Farrelly, John A. Sullivan; resident assistant secretaries at New York, John A. Sullivan, Patrick H. Mooney.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia on the eighth day of July, A. D., 1901, the following resolutions were adopted:

On motion of Mr. Banes, duly seconded by Dr. Peirce, Mr. William K. Jardine was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously

signed by Mr. John A. Sullivan or Mr. Stephen Farrelly, its resident vice-presidents, in the conduct of the business of the company in the said State of New York.

On motion of Mr. Pfahler, duly seconded by Mr. McOwen, Mr. Edmund C. Lockwood, of the city of New York, was duly elected a vice-president of the company, resident in the said city of New York, in the State of New York, with full power to execute in the name of the company, and to affix the corporate seal thereto and duly acknowledge the same, any and all bonds and contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company in the said State of New York.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia on the tenth day of February, A. D., 1902, the following resolutions were adopted:

On motion of Dr. Peirce, duly seconded by Mr. McOwen, Mr. John A. Sullivan was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. Edmund C. Lockwood, its resident vice-president, in the conduct of the business of the company in the said State of New York.

On motion of Mr. Sailer, duly seconded by General Wagner, Mr. William K. Jardine was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. Edmund C. Lockwood, its resident vice-president, in the conduct of the business of the company in the said State of New York.

On motion of Mr. Banes, duly seconded by Mr. Pfahler, Mr. Patrick H. Mooney was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. Edmund C. Lockwood, its resident vice-president, in the conduct of the business of the company in the said State of New York.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

I, Patrick H. Mooney, assistant secretary of the City Trust, Safe Deposit and Surety Company of Philadelphia, have compared the foregoing resolutions with the originals thereof, as recorded in the minute book of the said company, and do certify that the same are a correct and true transcript thereof.

Given under my hand and the seal of the company, this 24 day of February, A. D. 1902.

[L. S.]

P. H. MOONEY,
Assistant Secretary.

Statement of the City Trust, Safety Deposit and Surety Company of Philadelphia.

Incorporated 1886.

On the thirty-first day of December, 1901, the assets and liabilities of the company were:

Assets.		*Liabilities.*	
Cash on hand	$117,474 05	Capital stock	$500,000 00
Cash in banks	326,766 79	Surplus fund	150,000 00
Call loans upon collaterals	1,334,046 59	Re-insurance reserve	134,310 05
Time loans upon collaterals	94,460 00	Undivided profits	83,802 43
Loans upon bonds and mortgages	61,700 00	Deposits	2,295,312 08
Investment securities owned, stocks, bonds, &c.	437,707 00	Miscellaneous liabilities	12,416 00
Real estate, furniture, and fixtures	540,951 60		
Miscellaneous assets	262,734 53		
Total	$3,175,840 56	Total	$3,175,840 56

STATE, CITY, AND COUNTY OF NEW YORK, ss:

Patrick H. Mooney, being duly sworn, says that he is assistant secretary of the City Trust, Safe Deposit and Surety Company of Philadelphia, and that the above is a correct statement of the financial condition of the company, on December 31st, 1901.

P. H. MOONEY.

Sworn to and subscribed before me, this 24 day of February, A. D., 1902.

[L. S.]

WM. K. JARDINE,
Notary Public, Kings County, #58.

Certificate filed in New York county.

45 Endorsed.

Approved as to form and the sufficiency of the surety.

ALTON B. PARKER,
Chief Judge C. of Appeals, State of N. Y.

The signing and execution of the within bond by the plaintiff is hereby waived.

Dated New York, Feb. 27, 1902.

SMITH, CONWAY & WEED,
Att'ys for Def't.

46 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers constitute a true and correct copy of the return on appeal to the court of appeals in the action entitled "Anglo-American Provision Company, appellant against Davis Procision Company, respondent," and the whole thereof upon which the said court of appeals acted in rendering judgment therein, together with copies of the remittitur and opinion of said court, and of the original writ of error, assignment of error, copy of bond, acknowledgments and the endorsements thereon and original citation, which constitute the return herein to the Supreme Court of the United States, and that such papers as are copies, are true and correct copies of the originals on file in this office.

Seal State of New York Court of Appeals.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this 8th day of April A. D. 1902.

W. H. SHANKLAND,
Clerk of the Court of Appeals.

Endorsed on cover: File No. 18575. New York court of appeals. Term No. 64. The Anglo-American Provision Company, plaintiff in error, vs. Davis Provision Company. Filed June 5th, 1902.